IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8984 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RASIKBHAI KARSANBHAI KATARIA

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 8984 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No.3

RULE SERVED for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/11/2004

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 30.04.2004 passed by the District Magistrate, Bharuch and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.R.C.Kodekar for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that one prohibition case has been registered with GIDC Police Station, Ankleshwar being C.R.No.III-50 of 2004 against the detenu on 16.02.2004 and impugned detention order is passed on 30.04.2004 and therefore, there is a delay of more than two months in passing the order. Learned AGP has fairly admitted the same. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the offence registered against the petitioner was dated 16.02.2004 and order of detention was passed on 30.04.2004 based on this offence and hence, there is a delay of more than two months in passing the order. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be

sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 30.04.2004 passed against the detenu Rasikbhai Karsanbhai Kataria is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

(vijay)